

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 97-239-C

In Re:

Proceeding to Establish Guidelines for an  
Intrastate Universal Service Fund

)  
)  
) **Motion to Compel**  
) **Discovery Responses from**  
) **Bluffton Telephone**  
) **Company, Inc., Hargray**  
) **Telephone Company, Inc.,**  
) **Home Telephone Company,**  
Inc., Horry Telephone  
Cooperative, Inc., and PBT  
Telecom

TO: M. JOHN BOWEN, JR. & MARGARET M. FOX, attorneys for Bluffton Telephone Co., Inc.; Hargray Telephone Co., Inc.; Home Telephone Co., Inc.; Horry Telephone Cooperative, Inc.; and PBT Telecom

South Carolina Cable Television Association ("SCCTA") hereby moves pursuant to Rule 37 of the S.C. Rules of Civil Procedure, 26 S.C. Regs. 103-854, and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), that the Commission compel Bluffton Telephone Co., Inc.; Hargray Telephone Co., Inc.; Home Telephone Co., Inc.; Horry Telephone Cooperative, Inc.; and PBT Telecom ("ILECs") to respond to SCCTA's Interrogatories.

On January 12, 2004, counsel for SCCTA served ILECs by hand delivery with its Interrogatories (Exhibit 1). On January 22, 2004, ILECs filed and served its Responses and Objections to SCCTA's Interrogatories ("Response") (Exhibit 2).

## INTERROGATORY NO. 1

SCCTA's Interrogatory No. 1 requested the following information:

For each service for which you have reduced a rate and received USF funding since inception of the South Carolina USF, state the following:

- a) the minutes of use of such services for each year since 1997; and
- b) the revenues received from the sale of such service for each year since 1997.

ILECs' Response objects to the interrogatory on the grounds that the information requested is not relevant and contains confidential business information. The Commission's regulation 103-851 controls the broad scope of discovery. It provides that any material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding. 26 S.C. Regs. 103-851A. "Evidence is relevant if it tends to establish or make more or less probably some matter in issue upon which it directly or indirectly bears.....Evidence is relevant if it makes the desired inference more probable than it would be without the evidence." *State v. Hamilton*, 344 S.C. 344, S.E.2d 586, 591 (Ct. App. 2001); *Winburn v. Minnesota Mutual Life Ins. Co.* 261 S.C. 568, 201 S.E. 2d 372 (Sup. Ct. 1973).

The information sought is relevant to determine whether ILECs may have over-recovered money from the USF to date. Under the present USF plan that portion of the USF available to Alltel is based on its 1997 costs. In addition, the amount it currently takes from the USF is based on project lost revenues from access charge reductions implemented several years ago. This interrogatory seeks information relevant to the question of whether it is appropriate for Alltel to continue to receive funding based on

lost revenue projections from several years ago. The interrogatory requests information which is clearly relevant and it should be answered.

ILECs also contend that the information sought is confidential business information. SCCTA has already signed a protective agreement with the ILECs dated July 18, 2002, which protects the material requested and was executed to expedite the flow of discovery material. Therefore, any concerns regarding the exchange of material deemed confidential have been addressed by the protective agreement drafted by the ILECs and signed by SCCTA.

## **INTERROGATORY NO. 2**

SCCTA's Interrogatory No. 2 requested the following information:

For each company which has filed updated embedded cost studies in support of its application for additional USF funding provide the following information:

- a) the total amount of additional capital investment you have made since 1997;
- b) expenditures for each year since 1997, by USOA account, which were made to upgrade the network of the company;
- c) whether the company or any of its affiliates provide broadband services; and,
- d) whether the company or any of its affiliates provide cable television services or services similar to cable television services such as "digital entertainment services."

ILECs' Response objects to the interrogatory on the grounds that the information requested is not relevant and contend that subsections (c) and (d) seek information regarding services that are not subject to the jurisdiction of the Commission. As indicated in the discussion of relevancy above, the Commission's regulations provide for broad discovery of any material relevant to the pending proceeding. 26 S.C. Reg. 103-

The State's Universal Service Fund was established to ensure that basic local exchange service at affordable rates would be available throughout the state. S.C. Code § 58-9-280(E). The information sought in this interrogatory is relevant to determine whether the ILECs have invested money from the USF to provide for services other than basic local exchange services. The information is also relevant to determine if the costs included in the studies submitted by the ILECs were properly allocated to basic local exchange services.

The ILECs also contend that the Commission has no jurisdiction in regard to information sought in subsections (c) and (d) regarding un-regulated services offered by the ILECs and that the information is beyond the scope of the proceeding. ILECs transactions with its affiliated companies are subject to the scrutiny of the Commission under S.C. Code Section 58-9-320 (Supp. 2003) which provides that the burden of proof is on the "telephone utility to establish the reasonableness, fairness, and *absence of injurious effect upon the public interest* of any fees or charges growing out of any transactions between any telephone utility and such other corporation or person."


The Commission has a duty to be sure that the ratepayers of regulated utilities are not negatively impacted in any way by unregulated activities of the ILECs or their subsidiaries. *In re: Investigation of Property Transfers from S.C. Electric & Gas Co., SCANA, other SCANA Affiliates and Non-Affiliated Entities, and Allocation of Expenses, Revenues and Plant Between SCE&G, SCANA, and SCANA Affiliates*, Docket No. 89-230-E/G, Order No. 92-931, dated November 13, 1992, page. 8. The information on the unregulated business activities is clearly relevant to determine whether the ILECs may

have made capital expenditures or incurred costs which may have been improperly included in the embedded cost studies.

The objection of these ILECs on the grounds that the interrogatory seeks information about deregulated activities is especially curious given the fact that the cost studies they have submitted in this action report information about deregulated activities. Those cost studies purport to show how costs and expenses are allocated between regulated and deregulated activities. That allocation process is clearly relevant, discovery is clearly permissible and the ILEC's objections are completely unfounded.

WHEREFORE, SCCTA moves this Commission to compel the ILECs to provide the responses to the Interrogatories and such other relief as the Commission may deem proper.

ROBINSON, McFADDEN & MOORE, P.C.

By:   
Frank R. Ellerbe, III  
Bonnie D. Shealy  
Post Office Box 944  
Columbia, South Carolina 29202  
(803) 779-8900

Attorneys for South Carolina Cable Television  
Association

February 9, 2004

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 1997-0239-C

In Re: )  
)  
Proceeding to Establish Guidelines )  
for an Intrastate Universal Service )  
Fund )  
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**CERTIFICATE OF SERVICE**

This is to certify that I, Zachari Minton, a courier with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Motion to Compel Discovery Responses from Bluffton Telephone Company, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom** in the foregoing matter by hand delivery addressed as follows:

M. John Bowen, Jr., Esquire  
Margaret M. Fox, Esquire  
McNair Law Firm, P.A.  
P.O. Box 11390  
Columbia, SC 29211

Dated at Columbia, South Carolina this 9th day of February 04.

  
\_\_\_\_\_  
Zachari Minton

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 97-239-C

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In Re:

Proceeding to Establish Guidelines  
for an Intrastate Universal Service  
Fund

CERTIFICATE OF SERVICE

This is to certify that I, Angela B. Wedekind , a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **South Carolina Cable Television Association's Motion to Compel Discovery Responses from Bluffton Telephone Company, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc. and PBT Telecom and Certificates of Service** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Kay Berry  
Alltel South Carolina, Inc.  
2000 Center Pointe Drive, Suite 2400  
Columbia, SC 29210

Gene V. Coker, Esquire  
AT&T - Law & Government Affairs  
Suite 8100  
1200 Peachtree Street, NE  
Atlanta, GA 30309

John C. Ruoff, Ph.D.  
4322 Azalea Drive  
Columbia, SC 29205

Susan B. Berkowitz, Esquire  
SC Appleseed Legal Justice Center  
Post Office Box 7187  
Columbia, SC 29202

Martin H. Bocock, Jr.  
Sprint, Director-External Affairs SC Sprint  
1122 Lady Street, Suite 1050  
Columbia, SC 29201

Stan J. Bugner, State Director  
Verizon Select Services, Inc.,  
Suite 825 1301 Gervais Street  
Columbia, SC 29201

Craig K. Davis, Esquire  
1420 Hagood Avenue  
Columbia, SC 29205-1327

Scott A. Elliott, Esquire  
Elliott & Elliott  
721 Olive Street  
Columbia, SC 29205

Nanette Edwards  
ITC DelltaCom Communications  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Faye A. Flowers, Esquire  
Parker, Poe, Adams & Bernstein  
Post Office Box 1509  
Columbia, SC 29202

Steven W. Hamm, Esquire  
Richardson, Plowden, Carpenter & Robinson, P.A.  
P.O. Drawer 7788  
Columbia, SC 29202-7788

Elliott F. Elam, Jr., Esquire  
South Carolina Department of Consumer Affairs  
Post Office Box 5757  
Columbia, SC 29250-5757



Robert E. Tyson, Jr., Esquire  
Sowell Gray Stepp & Laffitte, LLC  
Post Office Box 11449  
Columbia, SC 29211


John M.S. Hoefer, Esquire  
Willoughby & Hoefer, P.A.  
Post Office Box 8416  
Columbia, SC 29202

Darra W. Cothran, Esquire  
Woodward, Cothran & Herndon  
P.O. Box 12399  
Columbia, SC 29211

John F. Beach, Esquire  
Ellis Lawhorne & Sims, P.A.  
P.O. Box 2285  
Columbia, SC 29202

Patrick W. Turner, Esquire  
BellSouth Telecommunications, Inc.  
Post Office Box 752  
Columbia, SC 29202

Dated at Columbia, South Carolina this 9th day of February 2004.

  
Angela B. Wedekind